

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

AMINI INNOVATION CORPORATION ) CV 14-2464 RSWL (SSx)

Plaintiff, ) ORDER RE: DEFENDANTS'  
 ) MOTION TO STRIKE [20]

v. )

MCFERRAN HOME FURNISHINGS, )  
INC., a California )  
corporation; SHARON LIN, an )  
individual; and DOES 1-9, )  
inclusive, )

Defendants. )

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Currently before the Court is Defendants McFerran Home Furnishings ("McFerran") and Sharon Lin's

(collectively, "Defendants") Motion to Strike the Complaint of Plaintiff [20] filed May 30, 2014.

Plaintiff Amini Innovation Corporation ("Plaintiff") filed an Opposition on June 17, 2014 [24] and Defendants filed a Reply on June 25, 2014 [25]. Having

1 reviewed all papers and arguments submitted pertaining  
2 to this Motion, the Court **NOW FINDS AND RULES AS**  
3 **FOLLOWS:**

4 The Court hereby **DENIES in part and GRANTS in part**  
5 Defendants' Motion to Strike.

6 **I. BACKGROUND**

7 Plaintiff is a California corporation with its  
8 principal place of business in Pico Rivera, California.  
9 Compl. ¶ 1. Defendant McFerran is a California  
10 corporation with its principal place of business in  
11 Chino, California. Id. at ¶ 2. Defendant Lin is a  
12 California resident and the owner and an officer or  
13 director of Defendant McFerran. Id. at ¶ 3.

14 Plaintiff is a well-known furniture designer and  
15 manufacturer located in Los Angeles County. Id. at ¶  
16 9. Plaintiff has advertised its furniture through  
17 various outlets, including the furniture industry's  
18 flagship publication, Furniture Today, an extensive  
19 website, a strong social media presence, brochure  
20 dissemination, and displays at trade shows. Id.

21 One of Plaintiff's products is its "Chateau  
22 Beauvais" bedroom collection, which includes furniture  
23 designs that consist of ornamental details and an  
24 overall shape and appearance originating with  
25 Plaintiff. Id. at ¶ 10. Plaintiff was awarded U.S.  
26 Copyright Registration Nos. VA 1-687-895, VA 1-707-601,  
27 and VA 1-687-890 for ornamental designs on various  
28 items in its Chateau Beauvais collection. Id. at ¶¶

1 12-14. Plaintiff was also awarded U.S. Design Patent  
2 Nos. D605,873 (the "'873 Patent") and D610,812 (the  
3 "'812 Patent") for items in its Chateau Beauvais  
4 collection. Id. at ¶¶ 16-17.

5 Plaintiff alleges that in early 2014, it learned  
6 that Defendant McFerran was publicly displaying and  
7 offering for sale knockoffs of items in Plaintiff's  
8 Chateau Beauvais bedroom collection. Id. at ¶ 18.  
9 More specifically, Plaintiff alleges that Defendant  
10 McFerran's B1600 and B1601 dresser, mirror, and  
11 nightstand and its B3600 mirror infringe on Plaintiff's  
12 intellectual property. Id. at ¶ 19.

13 Plaintiff contends that Defendant McFerran's  
14 infringements are willful (id. at ¶ 20), primarily  
15 because Plaintiff has previously sued both Defendants  
16 and another company, Greengrass Home Furnishings  
17 ("Greengrass"), at which Defendant Lin was an officer  
18 at the time (id. at ¶¶ 21-25). Both matters were  
19 settled, with permanent injunctions entered into by  
20 Defendants and Greengrass for the respective cases.  
21 Id. at ¶¶ 22-25. Plaintiff also has another pending  
22 Action, Case No. CV 13-6496 RSWL (SSx), in this Court  
23 against Defendants. Id. at ¶ 26. Plaintiff also  
24 claims that Defendant McFerran was sued for copyright  
25 infringement in another case in December 2007, Case No.  
26 CV 07-7919. Id. at ¶ 28.

27 Accordingly, Plaintiff brings claims for copyright  
28 infringement and design patent infringement against

1 Defendants. Id. at ¶¶ 33-52.

2 Plaintiff filed its Complaint in this Court on  
 3 April 1, 2014 [1]. Previously, Plaintiff had filed  
 4 another case, Amini Innovation Corp. v. McFerran Home  
Furnishings, Inc., No. CV 13-6496 RSWL (SSx), against  
 6 Defendants, resulting in a transfer to Judge Lew [11].

7 **II. LEGAL STANDARD**

8 **A. Motion to Strike**

9 Under Federal Rule of Civil Procedure 12(f), the  
 10 Court may, by motion or on its own initiative, strike  
 11 "an insufficient defense or any redundant, immaterial,  
 12 impertinent or scandalous" matters from the pleadings.  
 13 The purpose of Rule 12(f) is "to avoid the expenditure  
 14 of time and money that must arise from litigating  
 15 spurious issues by disposing of those issues prior to  
 16 trial." Whittlestone, Inc. v. Handi-Craft Co., 618  
 17 F.3d 970, 973 (9th Cir. 2010) (quoting Fantasy, Inc. v.  
 18 Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993)).

19 The grounds for a motion to strike must appear on  
 20 the face of the pleading under attack. See SEC v.  
 21 Sands, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995). In  
 22 addition, the Court must view the pleading under attack  
 23 in the light more favorable to the pleader when ruling  
 24 upon a motion to strike. In re 2TheMart.com, Inc. Sec.  
 25 Litiq, 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000)  
 26 (citing California v. United States, 512 F. Supp. 36,  
 27 39 (N.D. Cal. 1981)). As a rule, motions to strike are  
 28 regarded with disfavor because striking is such a

drastic remedy; as a result, such motions are infrequently granted. Freeman v. ABC Legal Servs., Inc., 877 F. Supp. 2d 919, 923 (N.D. Cal. 2012). If a claim is stricken, leave to amend should be freely given when doing so would not cause prejudice to the opposing party. Vogel v. Huntington Oaks Delaware Partners, LLC, 291 F.R.D. 438, 440 (C.D. Cal. 2013) (citing Wyshak v. City Nat'l Bank, 607 F.2d 824, 826 (9th Cir. 1979)).

### III. DISCUSSION

Defendants seek to strike ten paragraphs, paragraphs 21-29 and 32, from Plaintiff's Complaint and to strike Plaintiff's incorporation of paragraphs and exhibits from its complaint in another case involving the same Parties, Case No. CV 13-6496 RSWL (SSx). Mot. 2:17-4:2. These paragraphs, generally, reference prior litigation involving Plaintiff enforcing its intellectual property rights against Defendants or companies affiliated with Defendant Lin. See Compl. ¶¶ 21-28. The referenced paragraphs and exhibits relate to Defendants' alleged infringement of Plaintiff's "Hollywood Swank" and "Villa Valencia" bedroom collections. See Amini Innovation Corp. v. McFerran Home Furnishings, Inc., Case No. CV 13-6496 RSWL (SSx) (C.D. Cal.) Dkt. # 1 ¶¶ 19-30<sup>1</sup>; Smith Decl. Ex. C.

<sup>1</sup> Oddly, Defendants attach a copy of Plaintiff's Complaint in this Action instead of the complaint in Amini Innovation Corp. v. McFerran Home Furnishings,

1       **A. Are Plaintiff's Allegations Regarding Defendants'**  
 2       **Past Litigation History Immaterial or Impertinent?**

3       "‘Immaterial’ matter is that which has no essential  
 4 or important relationship to the claim for relief or  
 5 the defenses being pleaded.’” Fantasy, 984 F.2d at  
 6 1527 (quoting 5 Charles A. Wright & Arthur R. Miller,  
 7 Federal Practice and Procedure § 1382, at 706-07  
 8 (1990)). “‘Impertinent’ matter consists of statements  
 9 that do not pertain, and are not necessary, to the  
 10 issues in question.” Id.

11       Defendants argue that the challenged allegations  
 12 are immaterial because whether they have been involved  
 13 in other litigation regarding infringement of other  
 14 intellectual property has no bearing on whether  
 15 infringement occurred in the instant Action. Mot.  
 16 4:18-23. Plaintiff contends that past litigation is  
 17 relevant to damages and willfulness. Opp’n 7:2-5.

18       Plaintiff is correct that whether a defendant’s  
 19 infringement was willful may be relevant to damages for

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20  
 21 Inc., Case No. 13-6496 RSWL (SSx) (C.D. Cal.). See  
 22 Smith Decl. Ex. B. In any event, pleadings in related  
 23 litigation, such as the Complaint in the related case  
 24 here, are properly subject to judicial notice as they  
 25 are matters of public record. See Reyn's Pasta Bella,  
LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir.  
 26 2006); Headwaters Inc. v. U.S. Forest Serv., 399 F.3d  
 27 1047, 1051 (9th Cir. 2005); Fed. R. Evid. 201. As  
 Motion.

1 both copyright and patent infringement.

2 Under the Copyright Act, a "copyright owner may  
3 elect, at any time before final judgment is rendered,  
4 to recover, instead of actual damages and profits, an  
5 award of statutory damages . . . in a sum of not less  
6 than \$750 or more than \$30,000 as the court considers  
7 just." 17 U.S.C. § 504(c)(1). However, "where the  
8 copyright owner sustains the burden of proving, and the  
9 court finds, that infringement was committed willfully,  
10 the court in its discretion may increase the award of  
11 statutory damages to a sum of not more than \$150,000."  
12 Id. § 504(c)(2).

13 "Upon a finding of infringement, section 284 of the  
14 Patent Act requires the court to award 'damages  
15 adequate to compensate for the infringement.'" Jurgens  
16 v. CBK, Ltd., 80 F.3d 1566, 1569-70 (Fed. Cir. 1996)  
17 (quoting 35 U.S.C. § 284 (1994)). Section 284 further  
18 "gives the court discretion to 'increase the damages up  
19 to three times the amount found or assessed.'" Id. In  
20 determining "whether to grant enhanced damages as  
21 allowed under 35 U.S.C. § 284," a court applies "a two-  
22 step process." Whitserve, LLC v. Computer Packages,  
23 Inc., 684 F.3d 10, 37 (Fed. Cir. 2012) (citing Jurgens,  
24 80 F.3d at 1570). The two-step inquiry first requires  
25 the fact finder to determine "whether an infringer is  
26 guilty of conduct upon which increased damages may be  
27 based. If so, the court then determines, exercising

1 its sound discretion, whether, and to what extent, to  
2 increase the damages award given the totality of the  
3 circumstances." Id. The culpability requirement may  
4 be satisfied by "'[a]n act of willful infringement.'"  
5 Id.

6 Courts have found that a defendant's litigation  
7 history may be relevant to the issue of willfulness in  
8 the copyright infringement context. See Superior Form  
9 Builders, Inc. v. Dan Chase Taxidermy Supply Co., Inc.,  
10 74 F.3d 488, 497 (4th Cir. 1996) (finding that record  
11 supported jury's finding of willfulness where evidence  
12 included previous copyright infringement lawsuits  
13 involving the defendant); Twin Peaks Prods., Inc. v.  
14 Publ'ns Int'l, Ltd., 996 F.2d 1366, 1381-82 (2d Cir.  
15 1993).

16 Likewise, courts have found that a defendant's  
17 litigation history may be relevant to the issue of  
18 willfulness in the patent infringement context. See  
19 Donnelly Corp. v. Gentex Corp., 918 F. Supp. 1126, 1134  
20 (W.D. Mich. 1996); see also Mendenhall v. Cedar Rapids,  
21 Inc., 5 F.3d 1557, 1573 (Fed. Cir. 1993) (holding that  
22 defendants' knowledge of prior litigation involving a  
23 plaintiff's asserted patent would be relevant to the  
24 issue of willful infringement); TruePosition Inc. v.  
25 Andrew Corp., 611 F. Supp. 2d 400, 410 (D. Del. 2009).

26 The history of litigation between the Parties may  
27 certainly be relevant to the issue of willfulness and

1 damages for both Plaintiff's copyright and patent  
2 infringement claims, even if it is not necessarily  
3 relevant as to whether Defendants actually infringed  
4 the asserted intellectual property at issue in this  
5 Action. Typically, "a court must deny the motion to  
6 strike if any doubt exists whether the allegations in  
7 the pleadings might be relevant to the action."

8 Montecino v. Spherion Corp., 427 F. Supp. 2d 965, 967  
9 (C.D. Cal. 2006) (citing 2TheMart.com, 114 F. Supp. 2d  
10 at 965); Sec. & Exch. Comm'n v. Levin, 232 F.R.D. 619,  
11 625 (C.D. Cal. 2005). At this juncture, the Court  
12 cannot strike Plaintiff's references to Defendants'  
13 past litigation as the Parties' litigation history may  
14 be relevant to the issues of willfulness and damages.

15 Defendants also contend that the Court may strike  
16 as impertinent allegations that could not be admitted  
17 as evidence in the Action. Mot. 5:16-18 (citing  
18 Fantasy, 984 F.2d at 1527). Defendants argue that  
19 these allegations are improper character evidence or  
20 unfairly prejudicial under Federal Rules of Evidence  
21 403 and 404. Id. at 6:7-7:6; Reply 2:20-3:2, 5:18-  
22 6:18.

23 Evidentiary objections to allegations are typically  
24 a non-issue at the pleading stage, however. See In re  
25 New Century, 588 F. Supp. 2d 1206, 1221 n.12 (C.D. Cal.  
26 2008) (citing In re McKesson HBOC, Inc. Sec. Litig.,  
27 126 F. Supp. 2d 1248, 1272 (N.D. Cal. 2000)) (rejecting

1 hearsay objections in the defendants' motion to strike  
2 as being a non-issue at the pleading stage).

3 Defendants' evidentiary arguments with respect to these  
4 allegations are thus, similarly, a non-issue.

5 The Court finds support from Henrikson v.

6 Turbomeca, S.A., No. CV.S 06 1563 WBS DAD, 2006 WL  
7 3929541 (E.D. Cal. Dec. 13, 2006). In Henrikson, the  
8 plaintiffs brought product liability claims against  
9 several defendants for allegedly defectively designing  
10 and manufacturing a helicopter engine, which led to a  
11 deadly helicopter crash. Id. at \*1. The court denied  
12 defendants' motion to strike a plaintiffs' allegations  
13 referencing a defendant's prior litigation and  
14 judgments stemming from a previous helicopter crash  
15 involving a different engine manufactured by one  
16 defendant. Id. at \*1-\*3. Notably, the court rejected  
17 the "defendants' contention that these references in  
18 the complaint will prejudice the jury" because  
19 "[p]leadings such as the complaint . . . are not  
20 evidence admitted at trial, nor are they given to the  
21 jury for consideration." Id. at \*2. Furthermore, the  
22 court emphasized that "the determination as to whether  
23 evidence is inadmissible is not ripe for decision until  
24 an offer has actually been made to introduce the  
25 challenged material into evidence." Id. at \*3 (citing  
26 Hanley v. Volpe, 305 F. Supp. 977, 981 (E.D. Wisc.  
27 1969)). The court found that the allegations were

1 relevant because the plaintiffs' fraud and failure to  
2 warn claims were premised on a theory that the  
3 particular defendant had a company policy of failing to  
4 repair known defects. Id. Noting that it was "neither  
5 necessary nor proper at this stage for the court to  
6 assess the merits of such an argument," the court found  
7 it "sufficient to note that the prior events have some  
8 'essential or important relationship' to plaintiffs'  
9 arguments in support of their claims." Id. (quoting  
10 Fantasy, 984 F.2d at 1527).

11 Similarly, here, a determination as to whether the  
12 evidence supporting these challenged allegations is not  
13 ripe for decision as no offer to introduce evidence of  
14 these allegations has been made. Moreover, Plaintiff's  
15 allegations relating to Defendants' litigation history  
16 are potentially relevant to the issue of willfulness in  
17 calculating damages. Because Defendants' remaining  
18 arguments pertaining to Plaintiff's allegations of  
19 Defendants' litigation history are based on unripe  
20 evidentiary objections, the Court **DENIES** Defendants'  
21 Motion to Strike with respect to paragraphs 21-29 and  
22 32 of the Complaint.

23 **B. May Plaintiff Adopt by Reference Paragraphs and**  
24 **Exhibits from a Related Case?**

25 Paragraph 26 of the Complaint incorporates by  
26 reference paragraphs 19-30 and the attached exhibits to  
27 the complaint filed in related case Amini Innovation

1 Corp. v. McFerran Home Furnishings, Inc., Case No. CV  
2 13-6496 RSWL (SSx). Compl. ¶ 26. Those referenced  
3 paragraphs allege that Defendant McFerran infringed on  
4 some of Plaintiff's other intellectual property -  
5 namely its Hollywood Swank and Villa Valencia bedroom  
6 collections. See Amini Innovation Corp. v. McFerran  
7 Home Furnishings, Inc., Case No. CV 13-6496 RSWL (SSx)  
8 (C.D. Cal.) Dkt. # 1 ¶¶ 19-30. The attached and  
9 referenced exhibits are pictures of Defendant  
10 McFerran's alleged advertisements and public displays  
11 of knockoffs of Plaintiff's Hollywood Swank and Villa  
12 Valencia bedroom collection items as well as  
13 correspondence between the Parties relating to these  
14 alleged infringements. See Smith Decl. Ex. C.

15 Defendants argue that paragraph 26 of the Complaint  
16 violates Federal Rule of Civil Procedure 10(c)'s  
17 allowance for incorporating by reference exhibits and  
18 statements in or attached to other pleadings. Mot.  
19 7:10-8:16. Defendants also contend that the  
20 allegations and exhibits Plaintiff seeks to incorporate  
21 by reference are immaterial and impertinent. Reply  
22 6:20-7:10.

23 Plaintiff contends that Rule 10(c) permits  
24 referencing allegations and exhibits from a pleading in  
25 another case so long as, apparently, the adoption by  
26 reference is clearly done so as to enable the opposing  
27 party to ascertain the nature and extent of the

1 incorporation. Opp'n 15:17-25 (quoting Bruce v. Gore,  
2 Civil Action No. 3:10-CV-2173-G, 2012 WL 987556, at \*2  
3 (N.D. Tex. Mar. 22, 2012)).

4 Although there is some disagreement on this point  
5 (see e.g., Global Oil Tools, Inc. v. Barnhill, Civil  
6 Action Nos. 12:1507, 12-3041, 2013 WL 3070838, at \*9  
7 (E.D. La. June 17, 2013)), courts typically hold that  
8 Rule 10(c) does not allow a party to adopt pleadings  
9 from a wholly separate action, even if that action is  
10 between the same parties (see Tex. Water Supply Corp.  
11 v. R.F.C., 204 F.2d 190, 196-97 (5th Cir. 1953) ("Rule  
12 10(c) . . . permits references to pleadings and  
13 exhibits in the same case, but there is no rule  
14 permitting the adoption of a cross-claim in a separate  
15 action in a different court by mere reference");  
16 Aronson v. Advanced Cell Tech., Inc., 972 F. Supp. 2d  
17 123, 136 (D. Mass. 2013) (quoting Constellation Energy  
18 Commodities Grp. Inc. v. Transfield ER Cape Ltd., 801  
19 F. Supp. 2d 211, 223 (S.D.N.Y. 2011)); Davis v. Bifani,  
20 Civil Action No. 07-cv-00122-MEH-BNB, 2007 WL 1216518,  
21 at \*1 (D. Colo. Apr. 24, 2007) ("the Court does not  
22 believe that it is proper to incorporate by reference  
23 wholesale the allegations in a complaint in a  
24 completely separate action, even if that action is  
25 between the same parties"). Applying this rule, the  
26 Court strikes the Complaint's references to these  
27 allegations and exhibits.

1       The Court also finds that the purpose underlying a  
2 motion to strike further supports striking the  
3 Complaint's references to the related case's  
4 allegations and exhibits. Specifically, "the function  
5 of a 12(f) motion to strike is to avoid the expenditure  
6 of time and money that must arise from litigating  
7 spurious issues by dispensing with those issues prior  
8 to trial." Sidney-Vinstein v. A.H. Robins Co., 697  
9 F.2d 880, 885 (9th Cir. 1983) (citing Anchor Hocking  
10 Corp. v. Jacksonville Elec. Auth., 419 F. Supp. 992,  
11 1000 (M.D. Fla. 1976)). Plaintiff is already  
12 litigating these allegations in the separate, related  
13 action - allowing it to litigate these allegations in  
14 this Action would serve no purpose other than to  
15 multiply the proceedings and to confuse the issues.  
16 Such is a permissible basis for a motion to strike.  
17 See Ollier v. Sweetwater Union High Sch. Dist., 735 F.  
18 Supp. 2d 1222, 1223 (S.D. Cal. 2010) (citing Rosales v.  
19 Citibank, 133 F. Supp. 2d 1177, 1180 (N.D. Cal. 2001);  
20 Bureerong v. Uvawas, 822 F. Supp. 1450, 1478 (C.D. Cal.  
21 1996)).

22       Accordingly, the Court **GRANTS** Defendants' Motion to  
23 Strike with respect to paragraph 26's references to  
24 allegations and exhibits in the separate, related case.  
25 The Court notes, however, that this Order does not  
26 necessarily preclude Plaintiff from introducing this  
27 evidence at trial.

#### IV. CONCLUSION

For the reasons set forth above, the Court **DENIES** **in part and GRANTS in part** Defendants' Motion to Strike [20]. Specifically, the Court **DENIES** Defendants' request to strike paragraphs 21-29 and 32 of the Complaint. However, the Court **GRANTS** Defendants' request to strike paragraph 26's references to allegations and exhibits in the related case.

IT IS SO ORDERED.

DATED: July 9, 2014

RONALD S.W. LEW

**HONORABLE RONALD S.W. LEW**  
Senior U.S. District Judge